

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 30, 2021

1:03 p.m.

DRAFT

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 1

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to appropriations from the Alaska permanent fund.

- MOVED CSSSHJR 1(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 1

SHORT TITLE: CONST AM: PERMANENT FUND; POMV;EARNINGS

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME
02/18/21	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD, FIN
03/10/21	(H)	W&M REPLACES STA REFERRAL
03/10/21	(H)	BILL REPRINTED
04/13/21	(H)	W&M AT 11:30 AM DAVIS 106
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(W&M)
04/20/21	(H)	W&M AT 11:30 AM DAVIS 106

04/20/21	(H)	Moved CSSHJR(W&M) 1 Out of Committee
04/20/21	(H)	MINUTE(W&M)
04/22/21	(H)	W&M RPT CS(W&M) 5DP 2DNP
04/22/21	(H)	DP: WOOL, JOSEPHSON, SCHRAGE, STORY, SPOHNHOLZ
04/22/21	(H)	DNP: EASTMAN, PRAX
04/26/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/26/21	(H)	Heard & Held
04/26/21	(H)	MINUTE(JUD)
04/30/21	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

JEFF STEPP, Staff
 Representative Jonathan Kreiss-Tomkins
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented SSHJR 1 on behalf of
 Representative Kreiss-Tomkins, prime sponsor.

EMILY NAUMAN, Deputy Director
 Legislative Legal and Research Services
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on
 SSHJR 1.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Kurka, Vance, Drummond, Snyder, Kreiss-Tomkins, Eastman, and Claman were present at the call to order.

^#hjr1

HJR 1-CONST AM: PERMANENT FUND; POMV;EARNINGS

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CHAIR CLAMAN announced that the only order of business would be SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 1 "Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to appropriations from the Alaska permanent fund."

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REPRESENTATIVE KREISS-TOMKINS moved Amendment 1 to CSSSHJR 1(W&M), labeled 32-LS0167\I.1, Nauman, 4/24/21, which read as follows:

Page 2, lines 7 - 8:
Delete "June 30, 2022,"
Insert "June 30, 2023, an amount equal to"

Page 2, line 8, following "balance":
Insert "on November 8, 2022,"

REPRESENTATIVE EASTMAN objected for the purpose of discussion.

REPRESENTATIVE KREISS-TOMKINS invited his staff to provide an explanation of Amendment 1.

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JEFF STEPP, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, on behalf of Representative Kreiss-Tomkins, prime sponsor, presented an explanation document [included in the committee packet], entitled " HJR 1 v. I Amendment #1 HJUD Explanation 4.30.2021," which read, in part, as follows [original punctuation provided]:

1. Page 2, Line 8: delete [2022] and insert 2023 - The date of the deposit needs to be after the election of November, 2022.
2. Page 2, Line 8: after "2023" add an amount equal to - This, along with #3 below, provides protection from a post-election withdrawal from the ERA.
3. Page 2, Line 8 after "balance" add on November 8, 2022 - "An amount equal to" on the day of the election, would prevent a withdrawal from the ERA between the election (November 8, 2022) and the deposit on June 30, 2023 - or, if there was a withdrawal from the ERA, there would be a requirement to deposit "an amount equal to" what the unencumbered balance had been on November 8, 2022. This protects the ERA between the election on November 8, 2022, and the deposit on the following June 30, 2023.

Timeline:

November 8, 2022: Election

June 30, 2023: The unencumbered balance of the ERA shall be deposited in the Alaska permanent fund.

If amended, Section 30(a) of HJR 1 would look like this:

Section 30. Permanent Fund Amendments: Transition. (a) On June 30, 2023 [2022] an amount equal to the unencumbered balance on November 8, 2022 of the earnings reserve account established by law shall be deposited in the Alaska permanent fund and become part of the principal of the fund.

MR. STEPP explained that there existed an error in HJR 1 in which the unencumbered balance of the earnings reserve account (ERA) would not have been deposited into the permanent fund following the [2022] election. The correction of the date addressed in the amendment would remedy this oversight. He added that the intent of the amendment was to discourage a raid on the ERA between the election and the time of the deposit.

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REPRESENTATIVE KREISS-TOMKINS added that "the amount equal to" language had been conceived due to the occurrence of a legislative session timed between the potential ratification [of HJR 1] by the voters during which the legislature would maintain the authority to make withdrawals from the ERA. He suggested that such a raid, while legal, would go against the will of the voters should the constitutional amendment be passed by voters in November 2022.

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REPRESENTATIVE VANCE referred to the last line of the explanation [of the amendment] before the committee and asked the sponsor or his staff to define the "part L" referenced.

MR. STEPP suggested that formatting in the document may have resulted in a typo.

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REPRESENTATIVE EASTMAN referenced the June 30, 2023 [deposit] date and asked for an explanation of the reasoning for the timing.

REPRESENTATIVE KREISS-TOMKINS answered that the date was associated with the fiscal year and would allow the legislature adequate time to understand the budget implications should the constitutional amendment be passed by voters.

REPRESENTATIVE EASTMAN asked about the legality of [voters] compelling the legislature to pass an appropriation bill within a certain timeframe.

REPRESENTATIVE KREISS-TOMKINS prefaced his answer by stating that he does not maintain specific expertise regarding constitutionality of the proposed bill and said that Legislative Legal and Research Services had not contacted his office with notification that any constitutional conflict existed. He opined that [the nature of voters passing a constitutional amendment] would result in the constitutionality of the bill.

CHAIR CLAMAN invited Legislative Legal and Research Services to address Representative Eastman's question.

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EMILY NAUMAN, Deputy Director, Legislative Legal and Research Services, Legislative Affairs Agency, stated that the proposed legislation would require that the ERA balance be deposited into the permanent fund. She added that the permanent fund may not be appropriated except in accordance with the permanent fund section of the constitution; however, the balance of the ERA would remain available for appropriation by the legislature in its entirety. She added that the legislation, if passed, would not limit the legislature from appropriating in a future year.

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REPRESENTATIVE EASTMAN raised a concern that the state might encounter difficulties in meeting its constitutional obligations such as pensions should less money remain available [for appropriation]. He hypothesized a scenario in which [funds] could be drawn from the corpus of the permanent fund in order to meet obligations.

REPRESENTATIVE KREISS-TOMKINS said that, should the state encounter a conflict among constitutional mandates, he predicted

that an interested party could litigate and that there would occur judicial interpretation. He postulated that the judiciary would take into consideration legislative intent and stated that the intent of the amendment would in no way be to jeopardize the corpus of the fund during the transition language offered in the amendment. He suggested that there exist hierarchies in interpretation of constitutional language that addresses prioritization of expenditures and deferred to Legislative Legal and Research Services to provide additional context for the hypothetical scenario posed by Representative Eastman.

CHAIR CLAMAN summarized the hypothetical scenario to be that, if the constitutional amendment were to be approved by voters in 2022, and should the next legislature entirely empty the ERA, he asked then what the constitutional impact and what possible remedy of such an action would be.

MS. NAUMAN suggested that Representative Kreiss-Tomkins' summation that judicial intervention would likely occur. She stated that the proposed constitutional amendment is structured in a way that, should the legislature raid the ERA, then the legislature would be obligated to determine an alternate source of funding. She suggested one such source could be an obligation to [restore the fund] with future earnings until the obligation was satisfied. She agreed with his assertion that the judiciary would take into consideration legislative intent. She added that there exist judicial rules that would compel the judiciary to take into consideration more recent and more specific language [to determine legislative intent].

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REPRESENTATIVE EASTMAN asked what would be the legal impact of a scenario in which a market crash would leave the ERA with funds insufficient to cover the obligation that would be mandated under Section 2 of the proposed legislation.

MS. NAUMAN offered that the proposed amendment to CSSHJR 1 (W&M) specifies that the amount [determined for deposit] would be the higher of either the balance on the date of the election or the balance on the date of the deposit. She answered that, should a market crash occur, the legislature could face a scenario where there could be insufficient funds to meet the "greater of" test. She further suggested that funds would be required from alternate sources, or a lawsuit would likely occur. She said that the constitutional language remains clear

that funds may not be withdrawn from the corpus despite the existence of financial difficulty.

REPRESENTATIVE EASTMAN asked Ms. Nauman to explain how the "higher amount" in the proposed amendment is calculated.

MS. NAUMAN suggested that the amount would be calculated to be the amount equal to [the balance] on November 8, 2022.

CHAIR CLAMAN affirmed that the amendment prescribes that the amount that shall be deposited on June 30, 2023, would be equal to the unencumbered balance on November 8, 2022.

CHAIR CLAMAN suggested a scenario in which a market reduction resulting in \$ 1 million less in the ERA on June 30, 2023, than on November 8, 2022, and asked whether the legislature would be obligated to identify an alternate source for the \$1 million difference.

MS. NAUMAN answered that her interpretation of the amendment would result in such an obligation.

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REPRESENTATIVE EASTMAN asked whether the intent of the amendment would be, in the case the ERA was to realize a surplus, that the [deposit] would capture that surplus.

REPRESENTATIVE KREISS-TOMKINS suggested that a potential surplus as described, such as \$1 million, would be nominal to the entire amount of the fund, and the intent of the legislation is to protect the bulk sums [in excess of] \$70 billion. He welcomed further discussion.

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REPRESENTATIVE EASTMAN withdrew his objection to the motion to adopt Amendment 1 to CSSSHJR 1 (W&M). There being no further objection, Amendment 1 was adopted.

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REPRESENTATIVE DRUMMOND offered that the legislature would be allowed to appropriate an amount lower than 5 percent and not to exceed 5 percent. She expressed her support for CSSSHJR 1 (W&M), as amended.

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REPRESENTATIVE VANCE expressed her support for CSSSHJR 1 (W&M), as amended in that it would wisely cap spending; however, she stated that she would like to examine models depicting a higher royalty deposit rate and had sought such models from Legislative Finance Division. She noted that constituents in her district have advocated to include language that would enshrine the dividend in the constitution with any amendment pertaining to the permanent fund. She suggested that an amendment to address the amount of royalty deposits and the dividend may be forthcoming.

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REPRESENTATIVE EASTMAN suggested that all pending legislation [related to the permanent fund] be taken into consideration due to many potential impacts on statutes. He noted that changes to statutes have a different process than that of constitutional amendments and that a "surgical" approach be taken to avoid any potential constitutional crisis. He added that he did not support CSSSHJR 1 (W&M), as amended without a clear understanding of all the impacts of pending legislation and without it addressing the dividend.

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REPRESENTATIVE KURKA echoed some of the concerns expressed by Representative Vance and stated that he remained uncertain as to how he would vote when the proposed legislation came before the full body. He stated his assumption that statutes are subservient to [constitutional amendments] and that statutes would be required to be changed should a constitutional amendment pass.

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REPRESENTATIVE KREISS-TOMKINS expressed his interest in the models that Representative Vance had sought from the Legislative Finance Division [pertaining to royalty deposits] to determine if additional revisions to CSSSHJR 1 (W&M), as amended, would be warranted. He recalled comments made during the floor session had been among many comments with which he would agree.

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CHAIR CLAMAN echoed the comments made by Representative Drummond. He stated that he had a background in municipal government and the Municipality of Anchorage [had enacted] a tax cap which he described as working well, despite its criticisms. He added that CSSSHJR 1 (W&M), as amended, would function better than a tax cap or spending cap due to the limitations it would impose. He addressed the concerns brought forward by Representative Eastman and stated that it could not be assumed that additional constitutional amendments would appear on a particular ballot, and that he would take into consideration the merits of the proposed legislation before the committee and not other potential or pending legislation. He characterized Representative Kurka's comments that statutory language would be subservient to a constitutional amendment as correct. He stated his belief that a cause of ongoing concern would be the debate of taxes versus dividends going forward. He postulated that there existed a potential that taxes would become necessary in order to pay a dividend and that public sentiment should be sought to continue meaningful discussion.

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REPRESENTATIVE SNYDER moved to report CSSSHJR 1 (W&M), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHJR 1(JUD) was reported out of the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:37 p.m.